

**ROSS & PARKS, INC.**

March 29, 2004

Docket Clerk  
U.S. Department of Transportation Dockets  
Room PL-401  
Department of Transportation  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590-0001

Ms. Deborah Aheron  
U.S. Department of Transportation  
Maritime Administration  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590-0001

Re: Docket number MARAD 2004-17116

Dear Sirs or Madams,

I would like to share with you comments on MARAD's Draft Environmental Assessment to Transfer of National Defense Reserve Fleet Vessels from the James River Reserve Fleet for Disposal at Able UK Facilities, Teeside, U.K. I concur with the general thrust and specificity of the comments that have been posted by International Ship Breaking, LLC and the Sierra Club. In addition:

1. Section 1.0, paragraph 1: The U.S. Maritime Administration (MARAD) defines non-retention, obsolete vessels as those "that have reached the end of their useful life and are available for disposal."

Comment: MARAD did not use a consistent form of this definition when determining which vessels are part of the National Defense Reserve Fleet (NDRF) vessels that are to transfer to Able UK facilities in Teeside, U.K. for disposal. This inconsistency calls into question the intent and competitiveness of the PRP contract as well as MARAD's methodology that leads to the rejection of a domestic scrapping option in the Environmental Assessment.

The MARAD Post-service Remediation Partners (PRP) contract is for 15 obsolete, non-retention vessels. Four in a Pilot Program, nine to go only upon the successful completion of the Pilot Program, and two Kaiser-class Navy oilers that can either be transferred for a credit upon successful completion of the Pilot Program or, according to section H.10 of the PRP/MARAD contract, for a fee of \$3.5 million if the contract is terminated at the convenience of the government before the end of the pilot program.

Contract No. DTMA1C03010 Section H.5.1, MARAD states that within 90 days of delivery "PRP shall, in writing, notify the Administrative Contracting Officer of the selected use of the Unfinished Ships from the five (5) options proposed by PRP." Nonetheless, the ultimate disposition options for the oilers has not been announced by either MARAD or Post Service Remediation.

The oilers were not listed in the October 21, 2001, 121 vessel NDRF Non-Retention/PRDA candidate list. The addition of the oilers came after the initial PRDA submission period of January 7-11, 2002. They were added -- along with eight other obsolete, non-retention vessels -- in a February 27, 2002 amended list of 131 "*Obsolete Non-Retention Vessels as PRDA Candidates*." However, the oilers, the Benjamin Isherwood and Henry Eckford, are not only obsolete, they are, as the PRP/MARAD contract notes, also "unfinished." That the vessels were "unfinished" was not noted in that amendment or in any of the other amendments that MARAD put out for the PRDA. Further, they are subject to the conditions of Section 3603 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 105 - 261, approved October 17, 1998 (112 STAT. 1920).<sup>1</sup> This Public Law explicitly names the Eckford and Isherwood as Navy oilers that could be reconstructed for sale or charter to a NATO country for use as an oiler. However, it also sets a number of conditions such as:

Section 3603 (2) Required conditions. \_ The [Department of Transportation] Secretary may not convey a vessel under this section unless\_

- (A) competitive procedures are used for sales under this section;
- (B) the vessel is sold for not less than the fair market value of the vessel in the United States, as determined by the Secretary of Transportation;
- (C) the recipient agrees that any repair, except for emergency repairs, restoration, or reconstruction work for the vessel will be performed in the United States;
- (D) the recipient agrees to hold the Government harmless for any claims arising from defects in the vessel or from exposure to hazardous material, including asbestos and polychlorinated biphenyls, after the conveyance of the vessel, except for claims arising before the date of the conveyance or from use of the vessel by the Government after that date;
- (E) the recipient provides sufficient evidence to the Secretary that it has adequate financial resources in the form of cash, liquid assets, or a written loan commitment to complete the reconstruction of the vessel; and
- (F) with respect to the vessel, the recipient remains subject to all laws and regulations governing the export of military items, including the requirements administered by the Department of State regarding export licenses and certification of nontransfer end use.

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<sup>1</sup> **Sec. 3603. Authority to Convey Certain National Defense Reserve Fleet Vessels.**

(a) **Authority To Convey.** \_The Secretary of Transportation may convey all right, title, and interest of the United States government in and to the vessels BENJAMIN ISHERWOOD (TAO-191) and HENRY ECKFORD (TAO-192) to a purchaser for the limited purpose of reconstruction of those vessels for sale or charter to a North Atlantic Treaty Organization country for full use as an oiler.

The remainder of the language of Section 3603 can be found at:

<http://marad.dot.gov/publications/complaw03/pdf/National%20Defense%20Reserve%20Fleet%20Ready%20Reserve%20Force.pdf>

MARAD did not incorporate these clauses into the contract with PRP. There was no competitive procedure used for the sale. There was no survey undertaken to determine the fair market value of the vessel. The Able UK has stated to the press<sup>2</sup> that it intends to exercise all options at its yards -- which is not in the United States. Since the disposition of the oilers is not incorporated into the contract, it is unknown if current contract language is sufficient to absolve the US Government of any future liability arising from refit, sale or charter of the oilers. Neither the original owner of PRP (The Pyne Companies) or the post-contract transferee, Able UK, were able to post the performance bond originally called for in the MARAD/PRP contract, raising whether either party had/has financial resources in hand to undertake the reconstruction to double hull. There is no appendix to the contract to show that PRP intends to follow U.S. law and regulations governing the export of military items.

Mr. Peter Stephenson, the Managing Director of Able UK, is quoted<sup>3</sup> as stating that the storage of the four vessels currently at his quay in the UK, is costing him some 300,000 British pounds per week. Given that Able UK was unable to pay the full performance bond for the entire PRP/MARAD contract when Mr. Percy Pyne transferred the ownership of PRP from his company to Able UK, and that there is currently an extraordinarily high price of scrap metal on the international market; it is reasonable to expect one of the five options might be scrapping of the oilers -- particularly if PRP or a party the oilers are conveyed to, does not have the \$50 million necessary to refit the oilers with double hulls, thus extending their shelf life for NATO countries. Most importantly, there is no language in the contract that forbids the Eckford and the Isherwood from being scrapped.<sup>4</sup>

Whether one of the five options is scrapping, the options will undoubtedly have environmental effects. MARAD should be completely transparent with the regulatory authorities, the public, industry, and Congress by explaining what the five options are and potential environmental consequences of each option. If the five options do not include scrapping, the environmental effects of that should also be incorporated as the contract 1) does not exclude that option by substitution, and 2) MARAD could comply with voluntary International Maritime Organization and private sector maritime organizations standards for compiling toxic and environmental inventories prior to sale.<sup>5</sup>

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<sup>2</sup> *Hopes for New Ships Work*, Evening Gazette, December 5, 2003 found at: [http://icteesside.icnetwork.co.uk/0100news/0001head/content\\_objectid=13695046\\_method=full\\_siteid=50080\\_headline=-Hopes%2Dfor%2Dnew%2Dships%2Dwork-name\\_page.html](http://icteesside.icnetwork.co.uk/0100news/0001head/content_objectid=13695046_method=full_siteid=50080_headline=-Hopes%2Dfor%2Dnew%2Dships%2Dwork-name_page.html)

<sup>3</sup> Telegraph.co.uk, *Shipyard looks to take 'ghost' work abroad*, Christopher Hope, Business Correspondent, 24/03/2004; <http://www.money.telegraph.co.uk/money/main.jhtml?xml=/money/2004/03/24/cnable24.xml&menuId=242&sSheet=/money/2004/03/24/ixfrontcity.html>

<sup>4</sup> At current scrapping prices, Able UK would make a profit if it scrapped the oilers rather than refit them. The profit would be greater if scrapping is done in a low wage nation, but at current scrap prices, Able UK should be able to post a profit above cost even if it scraps the vessels at its facility in the UK.

<sup>5</sup> These efforts are to ensure that scrappers can adequately protect their workers and the environment during this final stage in the vessels' life cycle.

2. Section 1.1.1 states "the Secretary of Transportation, acting through MARAD, maintains the NDRF, which includes 146 ships that have been designated as obsolete."

Comment: This language is obfuscatory and could lead the public, regulatory agencies, or Congress to misunderstand the relationship of the Department of Defense, the U.S. Navy, and U.S. Army to the NDRF and their role in the preparation and formal review of this document.

While the DOT/MARAD maintain the NDRF, the funding and program management for the operation and maintenance of the non-Ready Reserve Fleet vessels of the NDRF, including the non-retention vessels<sup>6</sup>, comes through the budget authority of the Department of Defense capital-revolving account, the National Defense Sealift Fund<sup>7</sup> which is a fiscal component of the DoD U.S. Transportation Command.<sup>8</sup> Project management of the O&M activities rests with MARAD HQ and is further de-centralized to three MARAD field offices which maintain their own staff as well as subcontracts. There is no evidence that MARAD has incorporated Department of Defense or U.S. Navy policy and standards in the compilation of this draft Environmental Assessment.<sup>9</sup> In addition, the Sturgis, a former Army nuclear barge, is part of the James River Reserve Fleet. The U.S. Army Corps of Engineers is the problem holder and the program manager. To ensure that MARAD meets the best management practices of its customers and tenants, it is respectfully requested that MARAD request the involvement of the DoD U.S. Transportation Command, the U.S. Navy Ship Disposal program office, and the U.S. Army Corps of Engineers program office in the next iteration and review of this Environmental Assessment.

3. Section 1.2, Legal Framework, (b)(1)-(4) states the P.L.106-398,P3502(a), 114 Stat. 1654a-490 (2000) four Federal Acquisition Regulation (FAR) best value criteria to be used in the selection of scrapping facility:

- (1) in a timely manner;
- (2) at least cost to the Government;
- (3) giving consideration to worker safety and the environment; and
- (4) in a manner that minimizes the geographic distance that a vessel must be towed when towing a vessel poses a serious threat to the environment (Pub. L. 106-398, S3502(b), 114 Stat. 1654a-490 (2000)).

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<sup>6</sup> The only exception is the Sturgis, a U.S. Army Corps of Engineers former-nuclear power plant barge which is part of the James River Reserve Fleet and the Savannah, Department of Transportation nuclear powered vessel that is mothballed. MARAD also has a number of small research vessels that it maintains at fee for various U.S. agencies such as NOAA.

<sup>7</sup> In this instance, the actual fiscal relationship is handled by a Chief of Naval Operations office and MARAD.

<sup>8</sup> An office within the U.S. Transportation Command maintains minimal program oversight of MARAD's Operations and Maintenance responsibilities.

<sup>9</sup> The options in the *July 1997 Environmental Assessment of the Sale of National Defense Reserve Fleet Vessels for Scrapping* were Domestic Scrapping, Overseas Scrapping, and No Action. According to a 1999 interview by the author of these comments with a MARAD official familiar with the study, the report was paid for by MARAD but was for the use of both MARAD and the U.S. Navy and was an essential component of the process of getting the 1997 PCB waiver.

On page 6 of the Draft EA, MARAD states its "best value" award to PRP considered the following factors:

- Benefit to the ship disposal program short and long term
- Number of vessels/tonnage
- Rate of vessel removals from MARAD fleets
- Rate of vessel dismantling
- Disposal costs
- Condition of vessel(s) (James River high-risk vessels are the current priority)
- Environmental threat mitigation at MARAD fleets
- Proposal feasibility/risk
- Environment/worker safety protection at dismantling facility
- Proposal approach, methodology, special provisions

Comment: MARAD provides no content to demonstrate that the contract with PRP met any of its factors that would allow it to state they made a "best value" award. I fully concur with the Legal Framework comments of International Shipbreaking Limited, LLC. in this regard.

In addition, MARAD has not defined what the benefit is of the PRP contract to the ship disposal program short and long term.

Given the total number of vessels/tonnage of the ships MARAD must dispose of, it is unclear why the PRP contract represented "best value" either by definition of the FAR or to the government.

Since the rate of removal of the PRP contracted vessels is through 2004 (and at the discretion of MARAD could be extended), it is clear that PRP represents no increased best value to the Government than would scrapping in the United States.

The contract does not specify an actual date by which the dismantling must take place (only the end dates of tows before fines, which could be waived).

International Shipbreaking Limited addresses the issue of "best value" disposal cost. In addition, the \$17 million plus that is tied up in the Able UK contract is not available for ship scrapping. Another issue is PRP is to receive \$6 million US for disposal costs of the four vessels already towed to the UK. The disposal cost for 5 vessels being dismantled at Bay Bridge Enterprises in the Virginia Tidewater area is \$5 million. Clearly there is no fiscal advantage to scrapping in the UK. This is without even looking at the subsidy that the oilers will provide to Able UK's ability to economically scrap.<sup>10</sup>

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<sup>10</sup> *Commission of the European Communities: Technological and Economic Feasibility Study of Ship Scrapping in Europe, Report No. 2000-3527; Revision No. 01; February 2001.*

The MARAD/PRP contract allows for substitution of vessels at the discretion of PRP. This was already exercised in the choice of the first four vessels. MARAD has not demonstrated that this clause provides "best value".

MARAD does not provide evidence that the PRP contract provides "best value" in terms of environmental threat mitigation at MARAD fleets. The "best value" in terms of environmental threat mitigation at the MARAD fleets -- given that \$17 million dollars of FY03 funding is tied up in the MARAD contract; the Administration is only requesting \$11 million a year in disposal funding; and MARAD Administrator William Schubert stated several times at the July 2003 Ft. Eustis public briefing hosted by Virginia Senator George Allen and U.S. Representative JoAnn Davis (VA-1), that MARAD would only try to remove the worst-case vessels by the September 2006 deadline -- is to submit an FY2005 budget request to increase the National Defense Sealift Fund NDRF operation and maintenance line to remove the fuel from the decaying vessels.

Again, MARAD has yet to demonstrate how the PRP contract represents "best value" in regards to proposal feasibility/risk. On page 6, Legal Framework, MARAD asserts they used a "competitive procurement mechanism," the Program Research and Development Announcement (PRDA) to solicit proposals. MARAD has provided absolutely no transparency, as the FAR requires, to ensure the PRDA could be used by industry as a competitive procurement mechanism -- much less a driver for technological advancement in the research and development field (for which the PRDA is intended). It is a new procurement mechanism, developed initially by the Department of Energy and is not well understood by government or the private sector -- and not at all by the ship scrapping industry. In the 2001 MARAD Report to Congress (which MARAD cited to Judge Rosemary Collyer of the Washington DC Federal District Court as a "supplemental" environmental assessment), MARAD asserts they will issue a Request for Proposals, which is recognized by the FAR and the private sector as a competitive procurement mechanism.

MARAD has provided no substantiation as to why the PRP contract represents "best value" for the environment and worker safety protection as compared to the other proposals it received under the PRDA.

As noted in the discussion above about the PRDA, MARAD has failed to demonstrate why the PRP proposal represented "best value" in approach or methodology. And since the "special provisions" are not delineated, how can that be used as a criteria?

To give MARAD some benefit of doubt, perhaps they are comparing the PRP contract to other outside of the United States of America PRDA proposals. However, that is not the intent of the NEPA process<sup>11</sup> or of the Executive Order 12114<sup>12</sup>. And in regard to EO

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<sup>11</sup> This unfamiliarity with the NEPA process was demonstrated as early as the July 1997 Environmental Assessment of the Sale of National Defense Reserve Fleet Vessels for Scrapping which had no process of public or regulatory comment, but included a Record of Decision. The 1997 Report, however, includes six excellent appendixes that detail a number of issues, including the costs, techniques, and regulatory/policy issues related to each proposed action (Domestic Scrapping, Foreign Scrapping, and No Action).

12114, MARAD clearly did not assess the political effect of its actions thus far (the four vessel trans-Atlantic tow for disposal in the UK) in the development of this environmental assessment of nine vessels. That should also be corrected in the next draft of this Environmental Assessment.

4. As noted in other comments to the draft Environmental Assessment, MARAD has not substantiated its claim that domestic scrapping is not a viable option as "no US disposal facility currently has the capacity to accommodate a number of ships simultaneously. In regards to its further claim, "... or can meet the cost-effectiveness required by MARAD to meet the congressionally imposed deadline of September 2006," I respectfully submit the following comments:

Comment: Since MARAD rejects the option of Domestic Scrapping for this current Environmental Assessment, while it embraced the same option in the 1997 Environmental Assessment and the 2001 Report to Congress, it must provide substantiation to what has changed from the previous Environmental Assessment and supplemental EA's.

Additionally, the seeming tension between the deadline and the budget (a.k.a. "cost-effectiveness") is a false dichotomy that does not answer whether domestic scrapping is a viable option for the NDRF vessels included in the PRP contract.

Congress set the new deadline based upon the MARAD Report to Congress in 2001. That report had a viable budget and program management plan. Neither the budget or the program management plan has been implemented by MARAD or received the endorsement of the Office of Management and Budget which is the body which submits the President's annual budget to Congress. OMB is only willing to submit a budget of \$11 million per year. According to MARAD's 2001 Report and the 2001 RAND report for the U.S. Navy on *Disposal Options for Ships*, that is not enough to meet the Congressionally imposed deadline.

Interestingly enough, while the Administration has not endorsed a higher annual budget, it has endorsed -- despite significant political problems for the Administration -- the export of the ships to Able UK for a contract amount that exceeds what the President

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<sup>12</sup> Tellingly, the bibliography of the Draft EA cites for Executive Order 11214, a page from the Mining Mineral Service that has no statutory language. The Mining Mineral Service is a group in the Department of the Interior. A search of the MARAD website has no reference to the EO, and a search of the Department of Transportation site has links only to other member agency documents. Clearly, the DOT has no overarching policy for implementation and despite reference in materials, MARAD has not, as the EO requires, developed agency procedures. While the EA does not address whether MARAD determined that the export of vessels to the UK constituted a significant foreign action, by the time this Draft EA was written, the pilot action had caused significant impacts that are detailed in EO 12114 Section 2-5 i-iii. These impacts should be noted and reflected upon in the Environmental Assessment. However, rather than reflection, the Draft EA acts as if the four "pilot" vessels allowed by the U.S. District Court in the TRO had proceeded without incident or protest to the Able UK facility and the pilot was successfully concluded. In fact, the pilot cannot be executed because Able UK did/does not have the permits or technology to scrap as described in place, its fiscal health appears tenuous, and the official position of the UK government following two successful lawsuits against the MARAD "pilot" project is the vessels should be returned to the United States in the spring of 2004.

requested in FY03, the EPA "enforcement discretion," as well as the transfer of the oilers at below basic scrapping market value in contravention of the provisions of public law.

As to why Congress has not overridden the President's budget is pure speculation at this point.

MARAD should include in the next iteration of this document, how, if at all, it expects it to meet the 2006 deadline.

5. Able UK's Peter Stephenson<sup>13</sup> has begun publicly announcing he may utilize the contract provisions that allow him, upon approval of DOT/MARAD, to change subcontractors. He also announced he was looking at using contractors outside the UK in unnamed countries.

Comment: It is unclear whether MARAD will allow this substitution of yards and regulatory constructs and what the potential effects might be to this environmental assessment.

When the contract was first let, Able UK was a subcontractor to PRP. When PRP was unable to come up with the full performance bond, The Pyne Companies transferred the entity to Able UK. However, while there were some contract modifications, the MARAD/PRP Amendment 1<sup>14</sup> was not modified to take into consideration that Able UK may try to subcontract to another UK yard -- which was not inspected,<sup>15</sup> or outsource to scrappers in another unnamed, though cheaper country.

The viability and conditions of the subcontracting within the UK or offshore outsourcing should be addressed in the Environmental Assessment as should a more honest accounting of the present state of Able UK to dispose of the vessels. Since the EPA discretion letter was issued on what is clearly now seen as false premises (though whether that is simply on the part of PRP and Able UK is unknown), MARAD should explain in the Legal Framework section, why the PRP contract should not, or cannot, be pulled and how that affects the options it can use to dispose of the 11 remaining vessels in the PRP contract.

For any future non-U.S. contracts or pilot projects that may be undertaken, an important Lesson Learned of this experience is the inadvisability of using MARAD and US EPA headquarters personnel to inspect foreign yards and review regulatory compliance as it

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<sup>13</sup> Telegraph.co.uk , *Shipyard looks to take 'ghost' work abroad*, Christopher Hope, Business Correspondent, 24/03/2004; <http://www.money.telegraph.co.uk/money/main.jhtml?xml=/money/2004/03/24/cnable24.xml&menuId=242&sSheet=/money/2004/03/24/ixfrontcity.html>

<sup>14</sup> In an email request over 10 days ago to the MARAD POC for this draft EA, I requested that MARAD post the earlier environmental assessments as well as the contract modification referenced in the index to the draft EA so that the public and regulatory agencies might have them available to reference during this comment period. MARAD did not do so.

<sup>15</sup> Having MARAD and the US EPA inspect foreign yards and review regulatory compliance does not seem to have worked in the instance of the Able UK Teeside facility. Given what has now become known in terms of Able UK's lack of permits, required infrastructure and technology as presented to the U.S. government contracting officer and regulatory oversight personnel, due diligence was not adequately undertaken.



does not seem to have worked in the instance of the Able UK Teeside facility. Given what has now become known in terms of PRP's fiscal viability and Able UK's lack of permits, required infrastructure and technology as presented to MARAD in the PRP proposal, due diligence on the part of on-the-ground and supervisory U.S. government representatives was not adequately undertaken.<sup>16</sup>

6. Given the number and scope of the requested changes that MARAD is receiving during this comment period, I respectfully request that the next iteration of this document remain in the draft format.

I thank you for the opportunity to comment on this document, MARAD-2004-17166-2, and look forward to the next iteration.

Sincerely,

Polly Parks  
President, Ross & Parks, Inc.

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<sup>16</sup> I do not want to lay blame unfairly. If for some reason MARAD or EPA personnel involved in the contract and discretion letter recommended not going forward with this contract, that should be noted in the Environmental Assessment. If that occurred, the EA should explain why the contract was then allowed to go forward and whether this may have impacted the methodology used in evaluating the PRP proposal, as well as this draft environmental assessment (i.e., the EA is for the transfer of nine vessels, not simply the environmental effects of towing nine vessels as is covered in the technical section of the EA. If that was the case, there is no argument as to there being a domestic option.).